HONOURABLE SRI JUSTICE J.CHELAMESWAR
And
HONOURABLE SRI JUSTICE D.APPARAO

TUESDAY, TWENTYSEVENTH DAY OF JULY TWO THOUSAND SIX

WRIT PETITION No.1874 of 2006

Between:

Sri Venkata Narasimha Solvent Oils Ltd., Warangal.
.. Petitioner

And

1. The Deputy Commercial Tax Officer, Warangal and another others.
..Respondents

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ORDER: (Per Hon'ble Sri JC, J)**:**

The petitioner, a limited company, is carrying on business in extraction of solvent oil from Rice Bran. It was incorporated in the year 1991. Over a period of time, the petitioner suffered losses and came to be referred by the Board of Industrial and Financial Reconstruction (for brevity 'BIFR') on 16-11-2004 as required under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity 'SICA Act'). After appropriate enquiry, the BIFR declared by its order dated 22-05-2006 that the petitioner company has become a sick industrial company as defined under Section 3 of the SICA Act.

2. It appears that a further enquiry under Section 17 of the SICA Act is still pending before the BIFR and no final decision is taken by BIFR either to rehabilitate or wind up the petitioner-company, which are the two possible alternatives under the SICA Act.

3. In the meanwhile, the 1st respondent-Deputy Commercial Tax Officer, Warangal, issued proceedings under Section 25 of the AP General Sales Tax Act, dated 23-01-2006, proposing for sale of property belonging to the petitioner- company specified in the said proceedings. Therefore, the present writ petition.

4. Learned counsel for the petitioner Sri A.Sudershan Reddy, argued that in view of the embargo contained under Section 22 of the SICA Act, no legal proceedings either for the winding up of the company or for execution, distress or the like

against any of the properties of the industrial company shall lie or be proceeded with further.

5. On the other hand, the learned Government Pleader for Commercial Taxes, appearing for the respondents, argued that in view of the decision of the Supreme Court in **DUPUTY COMMERCIAL TAX OFFICER v. CORROMANDAL PHARMACEUTICALS**[1], there is an embargo on the recovery of the taxes only to such of those dues reckoned or included in sanctioned scheme and as the petitioner did not include the arrears of sales tax for the recovery of which the impugned proceedings in the writ petition are taken while making the application under Section 15 of the SICA Act, the embargo under Section 22 of the SICA Act does not deter the respondent from taking appropriate steps for the recovery of the tax. The Supreme Court at para-10 of the above mentioned Judgment, held as follows:

> "On a fair reading of the provisions contained in Chapter III of Act 1/1986 and in particular Sections 15 to 22, we are of the opinion that the plea put forward by the Revenue is reasonable and fair in all the circumstances of the case. Under the statute, the BIFR is to consider in what way various preventive or remedial measures should be afforded to a sick industrial company. In that behalf, BIFR is enabled to frame an appropriate scheme. To enable the BIFR to do so, certain preliminaries are required to be followed. It starts with the reference to be made by the Board of Directors of the sick company. The BIFR is directed to make appropriate inquiry as provided in Sections 16 and 17 of the Act. At the conclusion of the inquiry, after notice and opportunity afforded to various persons including the creditors, the BIFR is to prepare a scheme which shall come into force on such date as it may specify in that behalf. It is in implementation of the scheme where in various preventive remedial or other measures, are designed for the sick industrial company, steps by way of giving financial assistance etc. by Government, banks or other institutions, are contemplated.

In other words, the scheme is implemented or given effect to, by affording financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices by Government, banks, public financial institutions and other authorities. In order to see that the scheme is successfully implemented and no impediment is caused for the successful carrying out of the scheme, the Board is enabled to have a say when the steps for recovery of the amounts or other coercive proceedings are taken against sick industrial company which, during the relevant time, acts under the guidance/ control or supervision of the Board (BIFR). Any step for execution, distress or the like against the properties of the industrial company or other similar steps should not be pursued which will cause delay or impediment in the implementation of the sanctioned scheme. **In order to safeguard such state of affairs, an embargo or bar is placed under Section 22 of the Act against any step for execution, distress or the like or other similar proceedings against the company without the consent of the Board or, as the case may be, the appellate authority. The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22 (1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc, which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act.** Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against spirit of the statute in a business sense, should be avoided."

6. The submission of the learned Government Pleader for Commercial Taxes, in our view, cannot be accepted. No doubt, the Supreme Court categorically held that only those amounts covered by the scheme will be taken into account for the purpose of Section 22 of the SICA Act. Admittedly, no scheme as such has been framed in the present case. The proceedings under Section 17 of the SICA Act are still pending. No doubt, the BIFR would not rest its conclusions in framing the scheme, only on the information placed by the petitioner but also on information supplied by the other parties appearing before the BIFR.

7. Normally, the State is also put on a notice of the proceedings of BIFR and it is open to the State to bring it to the notice of BIFR regarding the amounts of arrears due to the State, the idea being that BIFR, while deciding whether the industry should be rehabilitated or winding up, is required to take into consideration all relevant factors and the liabilities, to arrive at a proper conclusion that whether it is possible to rehabilitate the industry or not.

8. In view of the fact that the scheme itself is not yet framed and the enquiry is still pending before the BIFR, the decision relied upon by the learned Government Pleader for Commercial Taxes, in our view, does not support the submission made by him. On the other hand, the further observations made in the same paragraph on the basis of the facts of the case, we see that the Supreme Court only held that the amounts of taxes calculated by the Sick Industrial Company after the sanctioned scheme are not covered by the embargo under Section 22 of the SICA Act. The submission of the learned Government Pleader for Commercial Taxes is, therefore, liable to be rejected.

9. However, we also make it clear that the embargo contained under Section 22 of the SICA Act is not an absolute and Section 22 of the SICA Act says legal proceedings of the nature referred to earlier shall be taken against particular industrial company where an enquiry under Section 16 or 17 of the SICA Act under an appeal is pending except with the consent of the Board. In other words, it is always open to the BIFR to permit any such legal proceedings mentioned in Section 22 of the SICA Act to have satisfied that such a permission is necessary having regard to the facts and circumstances of the case.

10. In the circumstances, the Writ Petition is allowed as prayed for. However, it is always open to the respondents to bring it to the notice of the BIFR and seek appropriate orders under Section 22 of the SICA Act with regard to the recovery of the arrears of tax in question in this writ petition. No costs.

(J.CHELAMESWAR, J)

(D.APPARAO, J)

July 28, 2006.
Kvr

[1] AIR 1997 SUPREME COURT 2027